

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ISAIAH SCHUBERT,

Plaintiff,

v.

CHERYL STRANGE, et al.,

Defendants.

CASE NO. 2:21-cv-1070 RJB-JRC

ORDER ON REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 31. The Court has considered the Report and Recommendation, Plaintiff's Objections to the Magistrate's Report and Recommendation, the Defendants' response to the objections, the Plaintiff's reply and the remaining file.

The Plaintiff filed this case on August 9, 2021 asserting that his Eighth Amendment right to be free from cruel and unusual punishment is being violated by Defendants' decision to force the Plaintiff to be double-celled with another prisoner. Dkt. 1 and 7. His application to proceed *in forma pauperis* ("IFP") was granted. Dkt. 6. The Plaintiff filed a Motion for Temporary

1 Restraining Order and Preliminary Injunction on September 17, 2021. Dkt. 8. The Plaintiff
2 requested that the Court order the Defendants to cease double-bunking at the facility and
3 transporting prisoners to other facilities. *Id.*

4 On October 15, 2021, a Report and Recommendation was issued, recommending that the
5 Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction be denied. Dkt.
6 31. It recommends this Court find that the requested relief is too broad, the portion of relief
7 related to transferring prisoners is not related to the claims in the complaint, and that the Plaintiff
8 has failed to show a likelihood of success on the merits. *Id.*

9 The Report and Recommendation (Dkt. 31) should be adopted and the Plaintiff's motion
10 (Dkt. 8) denied. The case should be re-referred to Magistrate Judge Creatura for further
11 proceedings. The Plaintiff's objections do not provide a basis to reject the Report and
12 Recommendation. In his objections, the Plaintiff states that in his motion for preliminary
13 injunction, he only wants to have the Court order that the Defendants stop their plan. Dkt. 35.
14 The Plaintiff fails to acknowledge that even this relief is too broad, and to some degree, unrelated
15 to the claims in his complaint. The Plaintiff states that he now seeks to force the Defendants to
16 implement safe living conditions such as "social distancing, sanitation, . . . sanitizer, . . . testing .
17 . . and personal protective equipment." Dkt. 35. The Plaintiff's newly articulated relief is
18 different from that addressed in the Report and Recommendation; it does not alter the analysis
19 that adoption of the Report and Recommendation is appropriate. The Plaintiff also refers to a
20 consent decree that has been vacated. Dkt. 35. He fails to demonstrate its relevance to his
21 motion or whether adoption of the Report and Recommendation is proper. *Id.* The Plaintiff adds
22 additional allegations, for example about getting his medications filled and the time it takes to
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1 get laundry back, which are not in the complaint and do not provide a basis to reject the Report
2 and Recommendation. It should be adopted.

3 It is **ORDERED** that:

4 (1) The Report and Recommendation (Dkt. 31) **IS ADOPTED**;

5 (2) The Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction
6 (Dkt. 8) **IS DENIED**; and

7 (3) This case **IS RE-REFERRED** to U.S. Judge J. Richard Creatura for further
8 proceedings.

9 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
10 to any party appearing pro se at said party's last known address.

11 Dated this 8th day of December, 2021.

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14 ROBERT J. BRYAN
United States District Judge
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